

1 (Whereupon, the following  
2 proceedings were not of a  
3 confidential nature and were had  
4 in open court.)

5 MS. SODERNA: I think we can go out of in  
6 camera now.

7 JUDGE GILBERT: Okay. Back in the public  
8 record.

9 BY MS. SODERNA:

10 Q And you're confident that your sales agents  
11 operating in Illinois are effectively communicating  
12 to consumers that your four- to five-year fixed-rate  
13 contracts offer price stability rather than savings;  
14 is that right?

15 A Yes, I'm very confident.

16 Q And at least you believe that that's what  
17 they're trained to do; right?

18 A Correct.

19 Q And just to be clear, agents are not  
20 trained to tell consumers that U.S. Energy's  
21 long-term contract is some sort of hedge or an  
22 insurance policy; is that right?

1           A     No, they're not.

2           Q     Rather, agents are trained to refer to the  
3     long-term products as price stability, as we  
4     discussed; right?

5           A     That's correct.

6           Q     Is it -- okay. We talked about that.  
7     Sorry.

8                     In your Exhibit 1.6 attached to your  
9     direct testimony is a welcome letter the Company  
10    sends new customers. Do you have that in front of  
11    you?

12          JUDGE GILBERT: Which exhibit?

13          MS. SODERNA: 1.6.

14          THE WITNESS: I don't have anything marked on  
15    anything.

16          MS. SODERNA: I have extra copies.

17          MS. NAUGHTON: It's your Attachment 1.6.

18          THE WITNESS: Okay. I have it.

19    BY MS. SODERNA:

20          Q     So this is -- right. This is a welcome  
21    letter that the Company sends new customers to  
22    confirm all the material elements of the contract; is

1     that fair?

2           A     I wouldn't say all the material, but  
3     generally it provides a recap of what they bought as  
4     well as it provides a benefit of another notice to  
5     the customer to confirm that we're going ahead with  
6     their sale.  It provides some of the data from it,  
7     reminds them of their cancellation period and the  
8     extended cancellation we give them.  And we also  
9     provide a graph on the back to provide them asurity  
10    that they have an understanding of what their current  
11    utility rates are, both in writing and with a visual  
12    presentation as well as we identify our fixed price  
13    against that.

14          Q     Right.

15                   And this letter, this one that you  
16    attached was dated July 14, 2008; is that right?

17          A     That's correct.

18          Q     And I understand that you may have updated  
19    this letter since, but for purpose of my questions  
20    we'll refer to this letter for this discussion.  Is  
21    that okay?

22          A     Yes.

1 MS. NAUGHTON: For clarity, there's several  
2 letters I have that -- they reference account  
3 numbers. They all look pretty much the same.

4 MS. SODERNA: I'm just looking at the first  
5 one. Thanks for pointing that out.

6 MS. NAUGHTON: 1714006808?

7 MS. SODERNA: Yes.

8 Are we all on the same page,  
9 literally?

10 THE WITNESS: I think so, yes.

11 BY MS. SODERNA:

12 Q So let's look at the second page of that  
13 exhibit, which has the title Natural Gas Commodity  
14 Price Information on it. And that shows a graph that  
15 depicts a historic rate of natural gas in the Nicor  
16 service area -- Nicor Gas service area. Do you see  
17 that?

18 A Yes, I do.

19 Q And that graph shows that -- it  
20 demonstrates actually a five -- approximately a  
21 five-year period from May 2003 to August 2008; right?

22 A Correct.

1           Q     And during that period -- over the two-year  
2     period between May 2003 and August 2005, Nicor's PGA  
3     hovered somewhere between approximately \$0.60 and  
4     \$0.80; is that fair?

5           A     That's correct.

6           Q     And according to the graph, there was a  
7     spike during the winter of 2005 2006 starting around  
8     October 2005 and ending around February 2006 when the  
9     price peaked at about \$1.20 per therm for  
10    approximately a month; would you agree?

11          A     Generally, yes.

12          Q     And then the price came back down to the  
13    approximately \$0.55 to \$0.58 range from, looks like,  
14    August '06 to February -- January, February '08;  
15    right?

16          MR. McMANAMAN:   Well, you know what, Judge?   I  
17    mean -- I mean, I guess I have an objection, you  
18    know, to the extent that -- I know Miss Soderna wants  
19    the witness to confirm, but the exhibit -- I mean,  
20    the line shows -- and it's broke -- well, and it's  
21    obviously broken up into quarterly increments.   So...

22          MS. SODERNA:   Right.   So I can strike that last

1 question and move on because that's neither here nor  
2 there.

3 BY MS. SODERNA:

4 Q But I would like you to confirm with me  
5 that you notice the chart -- the graph shows a large  
6 spike happening around March of 2008; is that  
7 accurate?

8 A Yes, generally around that time.

9 Q And even though the letter was dated in  
10 July, would you agree with me that the graph depicts  
11 this spike as continuing through August 2008?

12 A Yes, I do.

13 Q And the fixed price this particular  
14 customer agreed to pay was \$1.17 for five years; is  
15 that right?

16 A Yes, it was.

17 Q Would you agree with me that natural gas  
18 prices have dropped significantly since October 2008?

19 A Since, yes.

20 MS. SODERNA: And I'd like to introduce CUB  
21 Cross-Exhibit 9.

22

1 (Whereupon, CUB Cross-Exhibit  
2 No. 9 was marked for  
3 identification.)

4 MS. SODERNA: And this is a screen shot that I  
5 saved from Nicor Gas's Website.

6 MR. McMANAMAN: What number is this one, Julie?

7 MS. SODERNA: This is 9.

8 That shows --

9 BY MS. SODERNA:

10 Q Would you accept, subject to check, that my  
11 identification of this document is correct?

12 A Yes.

13 Q And the graph on this page depicts Nicor's  
14 PGA gas costs from October 2008 through October 2009.  
15 Do you see that?

16 A Yes.

17 Q And according to this graph, Nicor's PGA  
18 has ranged from a high of \$0.81 in September 2008 to  
19 a low of \$0.33 in September 2009; would you agree?

20 A Yes.

21 Q And it indicates that in October right now  
22 the PGA is around \$0.39, or that's what it states on

1     this graph; right?

2             A     Yes.

3             Q     I forgot to give you a calculator because,

4     unfortunately, you might need it for some of my

5     questions. It will be basic arithmetic, I promise.

6             A     Do I get to keep it? Is it a CUB

7     calculator?

8             Q     So averaging out those highs and lows, the

9     \$0.81 high to the \$0.33 low, would you agree with me

10    that that averages out to about \$0.58 and a half?

11                     And you can do the calculation, if you

12    want.

13             A     Am I required? Can I -- I just understand

14    the price range. Am I required to do the

15    calculation?

16             MR. McMANAMAN: Do you want to just make the

17    representation to him, ask him some, subject to

18    check -- have you already done the math, Julie?

19             MS. SODERNA: Yes. But I'm -- math is not

20    necessarily my strong suit. No, I'm kidding.

21                     Yes. No, I have done the math and

22    that is accurate. But I just wanted to give the



1 witness an opportunity to double-check my math.

2 THE WITNESS: It's just a straight average?

3 Not weighted or anything?

4 JUDGE GILBERT: I kind of like that subject to  
5 check idea.

6 MS. SODERNA: Okay. Subject to check.

7 THE WITNESS: Okay. I'll agree.

8 BY MS. SODERNA:

9 Q So would you agree with me that the rate of  
10 \$1.17, that this U.S. Energy customer accepted in  
11 July 2008 is twice Nicor's average rate in the last  
12 year?

13 A Generally, yes.

14 Q Now, I'm going to switch topics a little  
15 bit and talk about the Company's marketing areas in  
16 Illinois.

17 In response to CUB 2.12 regarding the  
18 Company's knowledge or information relating to the  
19 areas targeted by contractors, the Company responded  
20 that it has information based on where contractors --  
21 contracts are actually obtained. Are you familiar  
22 with that response?

1           A     Sorry. Say it again? What was the request  
2     and the response?

3           Q     The request was for the Company's knowledge  
4     or information relating to the areas targeted by  
5     contractors. And the Company responded that it had  
6     the information based on where contracts were  
7     actually obtained.

8                     I can show you the response if you  
9     want to see it.

10          A     Well, I wouldn't mind just so I understand  
11     the question.

12          Q     Sure, for completeness.

13                     And I don't intend necessarily to  
14     introduce this as a cross-exhibit, but I'll just show  
15     you.

16          MR. McMANAMAN: Which number is it, Julie, that  
17     you're asking?

18          MS. SODERNA: 2.12.

19     BY MS. SODERNA:

20          Q     So it's at the bottom of this page and the  
21     answer's at the top of the next...

22          A     2.12?

1           Q     Right.

2           A     Okay.  Yes, I see it.

3           Q     Okay.  So that seems to indicate that the

4     Company doesn't know before the fact where the

5     marketing efforts will occur.  That's what that seems

6     to say; would you agree?

7           A     That would be generally correct.  We

8     know -- usually on the Friday before the week we're

9     told where they may market.  But we don't know where

10    they actually did market until we have the contracts

11    in.  I believe it's on a Friday.

12          Q     Right.  And we actually discussed that

13    with -- I actually discussed that with Mr. Hames.

14          A     Oh, yeah.  Okay.

15          Q     And I believe also with Miss Findley.

16                     And so along those lines what I had

17    marked as CUB Cross-Exhibit 1, which I'll provide to

18    you and I've got extra copies for anyone that doesn't

19    have it already.

20           MS. NAUGHTON:  It's your Cross-Exhibit 1?

21           MS. SODERNA:  Right.

22

1 BY MS. SODERNA:

2 Q And this is the information -- I presume  
3 this is the information you just referenced that the  
4 Company knows the Friday before where -- the areas  
5 where sales agents are likely to market; is that  
6 right?

7 A Yes. Can I just provide a little more to  
8 that?

9 Q Sure.

10 A Illinois is unique in that the utilities,  
11 as I recall over the last few years, have asked that  
12 marketers start telling them what areas they're going  
13 to be in. And I believe this process was set up so  
14 that I believe every Friday, generally, the offices,  
15 through some mechanism, provide this information to  
16 the sales and marketing office who then forwards an  
17 e-mail to the utilities as per their request. I'm  
18 not sure if it's a tariff requirement or if it's more  
19 of a case that they've asked and then we've agreed to  
20 comply and to work with them on it.

21 Q Can I interrupt you. When you said "they,"  
22 do you mean --

1           A     The utilities.

2           Q     The utilities.

3                     So that would be Peoples Gas --

4           A     Nicor.

5           Q     -- and Nicor Gas?

6           A     And I'm not sure if it's all three.

7           Q     Is it North Shore also?

8           A     I'm not sure. But I know at least, I

9     think, two of them for sure.

10          Q     Do you recall generally when at what point

11     this -- the first e-mail we have -- I presume

12     everything was -- all of the e-mails were submitted.

13     But the first e-mail that I see was dated Friday,

14     February 9th, 2007. Is that the approximate time

15     when the Company started receiving this information?

16          A     I don't recall.

17          Q     Okay. So these e-mails are generated from

18     either Lisa Dhillon, is that right, or Alison

19     Dreizler?

20          A     Yes, I see that.

21          Q     And are those admins for the Company?

22          A     I believe one is -- well, they're both in

1 the Marketing Department. I'm not sure what their  
2 titles are. I know one is an admin.

3 Q Oh, I'm sorry.

4 A No, my fault.

5 Q And are they in Ontario, or are they in  
6 Chicago?

7 A No, they're in Ontario.

8 Q And do you know who they get this  
9 information from?

10 A My understanding is it comes in from the  
11 regional offices. I'm not sure by who or in what  
12 fashion. I can assume or make assumptions; but since  
13 I don't know, I won't.

14 I just know it gets to them. And they  
15 usually, I believe, are required or asked to send it  
16 to the utilities on the Friday before the week.

17 Q And do you recall why the utilities  
18 requested that information, the details behind it?

19 A No, I just -- no, I don't, actually. I  
20 think they just wanted to know where --

21 Q You don't remember if it had anything to do  
22 with a lot of complaints being made to utilities, for

1     example, regarding marketing efforts by U.S. Energy  
2     sales agents?

3             A     I don't recall that at all because I don't  
4     believe we get a lot of complaints from the utilities  
5     generally. But I don't believe that was why.

6                     I think it's -- well, again, I don't  
7     know. I just remember that they had asked. And I'm  
8     assuming that all marketers do that.

9             Q     You don't recall having any conversations  
10    regarding concerns by aldermen about the sales  
11    activity from U.S. Energy sales agents? You don't  
12    recall that?

13            A     Not related to this activity, no.

14            Q     Okay. I'm finished with that exhibit.  
15    Thank you.

16                     So I'll move on to another topic. In  
17    response to CUB's allegation that the Company targets  
18    low-income customers you had analysis prepared under  
19    your direction in your rebuttal testimony to refute  
20    that. And I don't want to tread on any  
21    confidentially designated materials.

22                     Once again, a statement that you made

1     based on this analysis was designated as  
2     confidential. And I believe that actually does, in  
3     fact -- and I'm sorry, it's at Page 20, Line 466.  
4                     466 and 467. Oh, wait. That's not  
5     confidential -- oh, yes, it is. It's in the  
6     broader --  
7             MS. NAUGHTON: Of the rebuttal, this is?  
8             MS. SODERNA: Yes.  
9             MS. NAUGHTON: Yes, it is. Okay.  
10            MR. McMANAMAN: Yeah, and this remains  
11     confidential because, remember, the Company had  
12     received this information -- or I should say  
13     purchased the ZIP code information, remember? I  
14     can -- it's pointed out in a DR response. I can't  
15     remember which one it is.  
16            MS. SODERNA: The proprietary data.  
17            MR. McMANAMAN: Right. From the ZIP code  
18     collecting company or whatever ZIP code world.  
19            MS. SODERNA: Even the aggregated, you know,  
20     general conclusion not relating at all to the  
21     specific data?  
22            MR. McMANAMAN: Yeah, you mean Lines 466 and



1 the first part of 467?

2 MS. SODERNA: Right, just that sentence.

3 MR. McMANAMAN: Yeah, that's probably not.

4 MS. SODERNA: Are you all comfortable with me

5 discussing -- that's all I intend to reference with

6 regard to that testimony.

7 MR. McMANAMAN: Sure. That can be public.

8 MS. SODERNA: Okay. Great.

9 BY MS. SODERNA:

10 Q So at your rebuttal testimony on Lines 466

11 and 467 you state that it appears there's no

12 correlation between the level of business activity

13 and income level, let alone a strong correlation. Is

14 that your testimony?

15 A Yes, it is.

16 Q The Company has over -- or approximately

17 100,000 customers in Illinois; is that right?

18 A Yes.

19 Q And you testified in your direct that more

20 than twice that number have actually signed contracts

21 with the Company. Is that your recollection?

22 A Well, actually over 550,000 have signed

1     since we've been here and I think during that year.

2     That's probably accurate.

3           Q     And you testified that at least one reason  
4     about half the customers -- or half, at that time,  
5     who signed contracts do not enroll is because they  
6     fail your credit check process. Is that one reason?

7           A     That's a major contributor, yes.

8           Q     And, in fact, in response to Staff's DR  
9     CSD 5.24 the Company stated that -- and at that time,  
10    as of May 2008, of the 150,000 contracts signed since  
11    2004 that did not become effective, 104,000 of them  
12    did not become effective due to credit check reasons;  
13    is that right?

14          A     I don't have it in front of me.

15          MR. McMANAMAN: Julie, are you asking him is  
16    that what the data response says or is that -- or is  
17    the data response correct?

18          MS. SODERNA: Both.

19    BY MS. SODERNA:

20          Q     So is that your recollection of data  
21    response or would you like to see it?

22          A     I read a lot of stuff. I'd like to see it

1       unless there's -- you know...

2               Q       Sure.  No problem.

3               MS. SODERNA:  So I think just for purposes of

4       the record it might serve us to enter this as a

5       cross-exhibit.  So this would be CUB

6       Cross-Exhibit 10.

7                               (Whereupon, CUB Cross-Exhibit

8                               No. 10 was marked for

9                               identification.)

10       BY MS. SODERNA:

11               Q       Why don't you take a look and let me know

12       when you're ready.

13               A       Okay.  Yeah, I see that.  That is what it

14       says.

15               Q       So I'm going to ask just very low level

16       math here -- or would you accept, subject to check,

17       that the 104,000 divided by 150,000 total equates to

18       69.3 percent?

19               A       Yes.

20               Q       If I did my math right.

21               A       Checked it.

22               Q       Check it later.

1                   In its data request response to  
2   Staff's 2.01 and CUB 6.01, the Company provided the  
3   number of total contracts signed by year. Are you  
4   familiar with those data responses?

5           A     I recall that we had them, but I don't  
6   remember what's in them.

7           Q     If I recite them to you, would you accept  
8   them, subject to check, or we can dig up that  
9   response, too, if that would help.

10          A     I believe I would.

11          MR. McMANAMAN: What numbers did you say,  
12   Julie?

13          MS. SODERNA: 2.01 and 6.01.

14          MR. McMANAMAN: Is that Staff 2.01.

15          MS. SODERNA: Yes. Sorry. Staff 2.01 and CUB  
16   6.01.

17          MR. McMANAMAN: Do you want me to just show a  
18   copy of it to the witness?

19          MS. SODERNA: I mean, yeah, maybe he can just  
20   look at it and then when I read them then we don't  
21   necessarily have to enter it as a cross-exhibit. You  
22   can just accept that those are the Company's

1 responses.

2 THE WITNESS: 2001?

3 BY MS. SODERNA:

4 Q Right. The total number of contracts  
5 signed per year from 2005 through 2008 was included  
6 in CUB 6.01. And the contracts signed for 2004 were  
7 included, I think, in Staff's 2.01. I think  
8 that's -- that was what -- how I came up with those.

9 Okay. Yeah, so these responses  
10 indicate that in 2004 38,811 customers contracted  
11 with U.S. Energy; right?

12 A Yes, it does.

13 Q And in 2005, the number was 110,000; in  
14 2006, the number was 110,000; in 2007, the number was  
15 130,000; and as of May 2008 at that time  
16 approximately 25,000 customers had contracted with  
17 the Company; is that correct?

18 A Approximately, yes.

19 Q Would you accept, subject to check, that  
20 these amounts total to about -- or exactly 413,811  
21 customers who signed contracts with the Company  
22 during that time frame?

1           A     Subject to check, yes.

2           Q     And would you agree with me, subject to  
3     check, again, that the ratio of contracts signed  
4     during that period to the ratio -- to the contracts  
5     rejected for credit reasons during that period is  
6     about 25 percent? And that is -- let me explain my  
7     methodology. I divided 104,000 into 413,811 to come  
8     up with that.

9           JUDGE GILBERT: I think you meant that the  
10    other way around.

11          MS. SODERNA: The numerator was 104,000. The  
12    denominator was 413,811.

13          THE WITNESS: Okay. Yeah, that's generally  
14    correct.

15    BY MS. SODERNA:

16          Q     It's actually 25.13 percent.

17          A     Okay.

18          Q     CUB asked the Company in its Data Request  
19    2.13, which was served to the Company in June,  
20    whether it publishes a list of credit worthiness and  
21    the Company responded in July stating that it does  
22    not. Is that your recollection?

1           A     That's correct.

2           Q     And you're aware, aren't you, that the  
3     Company later supplemented this response in  
4     December 2008 with an exhibit entitled Illinois Gas  
5     Credit Acceptance Ratios. Are you familiar with that  
6     document?

7           A     Yes, I am.

8           MS. SODERNA: Okay. I'd like to mark that  
9     exhibit as CUB Cross-Exhibit 11.

10                                 (Whereupon, CUB Cross-Exhibit  
11                                 No. 11 was marked for  
12                                 identification.)

13     BY MS. SODERNA:

14           Q     And I'll show it to you.

15                                 And this exhibit shows the acceptance  
16     ratio by ZIP code of U.S. Energy contracts; is that  
17     right?

18           A     Yes, it does.

19           Q     And it has columns listing the following:  
20     Acceptance ratio, total contracts signed, total  
21     credit check, percent credit check, and acceptance on  
22     payroll; is that right?

1           A     Yes, it does.

2           Q     And in this -- I'll only be referring to  
3     the first six pages of this exhibit. I believe the  
4     rest of it is more in line with the work papers  
5     supporting it, I think. It looks to me like the  
6     first six pages are the summary data; is that  
7     accurate?

8           A     I've never seen -- well, I don't recall the  
9     whole report. But it appears to be a summary at the  
10    front, yes.

11          JUDGE GILBERT: Will one of your questions be  
12    to get a definition of what the words "acceptance on  
13    payroll" would be?

14          MS. SODERNA: Sure.

15          JUDGE GILBERT: I mean, I can do that. I just  
16    didn't know if you had that planned.

17          MS. SODERNA: I didn't, but that seems like it  
18    would be a good idea.

19          JUDGE GILBERT: Please.

20    BY MS. SODERNA:

21          Q     Could you explain to us what the column  
22    means?



1           A     I don't know for sure. I didn't prepare  
2     the report. But, maybe, what it means is that by the  
3     time it got to payroll it was accepted still.  
4     Because people cancel throughout a period. So it may  
5     very well just identify it by the time it got to  
6     payroll if it was accepted at that time. I don't  
7     know.

8           JUDGE GILBERT: Would you assume the payroll  
9     that's referred to there has to do with the payment  
10    of commissions to the contract?

11          THE WITNESS: That's correct. Yes, I would  
12    think so. Assuming that's the case, that's what it  
13    would refer to.

14    BY MS. SODERNA:

15          Q     And then would you accept, subject to  
16    check, of course, and you can breeze over them if you  
17    want to take a second look. But I took the time to  
18    look through these and would you accept, subject to  
19    check, that the acceptance ratios range from a high  
20    of 97.79 percent to a low of 31 percent? And I can  
21    point out the particular ZIP codes if you'd like.

22          MR. McMANAMAN: Excuse me, Julie. Which page

1 range is that in, the high and low that you're asking  
2 about?

3 MS. SODERNA: I'm referring to the --  
4 throughout these six documents, which list ZIP codes  
5 in order. And I'm sorry. I'm referring to the  
6 acceptance ratio, the first column.

7 MR. McMANAMAN: Okay.

8 MS. SODERNA: That's all I looked at.

9 MR. McMANAMAN: Okay. So the acceptance  
10 column --

11 MS. SODERNA: And then I just --

12 MR. McMANAMAN: That's on the first --

13 MS. SODERNA: -- scanned it for the highest  
14 acceptance ratio versus the lowest acceptance ratio.

15 MR. McMANAMAN: In the first six pages of this  
16 exhibit?

17 MS. SODERNA: That's right. Which includes, it  
18 appears, all the ZIP codes in Illinois or at least in  
19 the -- northeastern Illinois.

20 MR. McMANAMAN: Right. But if there's -- I  
21 mean, you know, do you want the witness to go through  
22 it all or should we just do it, subject to your

1 check?

2 MS. SODERNA: Yeah, I just -- I indicated  
3 subject to check, but --

4 MR. McMANAMAN: Okay. I'm sorry. I didn't  
5 hear that.

6 MS. SODERNA: That's okay.

7 THE WITNESS: Yeah. Okay.

8 BY MS. SODERNA:

9 Q And it's not your testimony, is it, that  
10 the ZIP code with the highest credit acceptance ratio  
11 are those the Company targets in its sales efforts;  
12 right?

13 A I'm sorry. Say that again.

14 Q The Company doesn't purport to target ZIP  
15 codes with the highest credit acceptance ratio;  
16 right?

17 A No, we don't.

18 Q Did you review Mr. McDaniel's surrebuttal  
19 testimony in preparation for today's hearing?

20 A I do not believe I did. I may have read it  
21 previously.

22 Q Well, I'd like to show you -- let me

1 explain what he did and then maybe I can show you one  
2 of his exhibits and maybe it will jog your memory or  
3 maybe you'll feel comfortable testifying about it  
4 anyway.

5 In examining the information included  
6 in CUB Cross-Exhibit 1, which was the e-mails  
7 regarding where the sales agents planned to market  
8 the following week --

9 A Right.

10 Q -- Mr. McDaniel did an analysis and  
11 identified 13 ZIP codes that were most heavily  
12 targeted or most heavily represented in that  
13 information.

14 A Okay.

15 Q Would you accept that, subject to check?

16 A Sure.

17 Q And I can refer you to his surrebuttal  
18 testimony, if you'd like.

19 A Okay.

20 Q Do you have that in front of you, by any  
21 chance?

22 A No.

1           MR. McMANAMAN:  No.  But you know what, Julie?  
2   I'm going to object because if that's Mr. McDaniel's  
3   testimony, then that's his testimony and it's subject  
4   to --  
5           MS. SODERNA:  Right.  But because it's -- the  
6   testimony sought to refute claims by Mr. Potter.  And  
7   so I would have assumed that he would have reviewed  
8   it rather closely in preparation for today's hearing  
9   to answer questions about it.  
10                    But, I mean, my questions aren't that  
11   detailed, so I think we can handle it.  
12           MR. McMANAMAN:  Right.  But, I mean, if you're  
13   asking him the correctness of Mr. McDaniel's  
14   testimony...  
15           MS. SODERNA:  No, I'm asking his familiarity.  
16           MR. McMANAMAN:  Oh, well, sure.  But...  
17           MS. SODERNA:  I don't know -- maybe I  
18   misphrased the question.  Maybe I can give it another  
19   shot.  
20   BY MS. SODERNA:  
21           Q     Are you generally familiar with the  
22   analysis that he conducted in his surrebuttal looking

1 at the areas in the -- represented in those e-mails?

2 A I'm not generally familiar. I don't have a  
3 good recollection of it, but I remember there was  
4 information in there.

5 Q Well, let me show you -- and as  
6 Mr. McManaman indicated, his testimony is what it is  
7 and, I guess, I'm not necessarily asking you to, you  
8 know, tell me if you believe it's accurate.

9 But subject to check -- or I  
10 suppose -- you know, his testimony will be subject to  
11 cross-examination later today or tomorrow. But what  
12 I just showed you is his Exhibit 8.2 where he  
13 summarizes the analysis that he performed on the  
14 areas identified in the e-mails. Would you accept  
15 that, subject to check?

16 A I'd just like an understanding of what it  
17 says.

18 Q Those --

19 A I understand what I see in front of me.  
20 But I don't understand what number of USESC marketing  
21 effort means.

22 Q Those are the numbers of times the area

1     that ZIP code showed up on the e-mails that were part  
2     of CUB Cross-Exhibit 1.

3             A     Okay.  Yeah.

4             Q     Yeah.  And Mr. McDaniel identified the 13  
5     ZIP codes that were targeted by U.S. Energy sales  
6     agents more than 30 times and more than any other ZIP  
7     codes in Chicago.

8             A     Okay.

9             Q     Do you recall that testimony?

10            A     Yeah, but vaguely.

11            Q     Vaguely.

12                         And Mr. McDaniel attaches a map to his  
13     testimony where he highlights those 13 ZIP codes.  Do  
14     you recall looking at that?

15            A     I remember there was a map, yes.

16            Q     And would you accept, subject to check,  
17     that the credit acceptance ratios for those 13 ZIP  
18     codes that he identified that were most heavily  
19     marketed to by the Company, the credit acceptance  
20     ratios range from a high of 53.70 percent to a low of  
21     31.54 percent.  Would you accept that?

22            MR. CLANCY:  I'd like to object that it

1 mischaracterizes Mr. McDaniel's testimony. First of  
2 all, there is no testimony that any of these ZIP  
3 codes were targeted. Second of all, this is not  
4 the -- this is a statement as to the City of Chicago  
5 ZIP codes and there are approximately 30-some of  
6 those. There are 50 to 60 or 70 additional  
7 municipalities that are listed in the exhibit that  
8 Mr. McDaniel refers to that are not discussed here.  
9 So when Miss Soderna is saying that these are the ZIP  
10 codes that are most often reflected in those e-mails,  
11 that's not a correct statement of Mr. McDaniel's  
12 testimony.

13 MS. SODERNA: And with that proviso, you are  
14 correct. Thank you for correcting me on that. I  
15 don't think I made clear that the boundaries of  
16 Mr. McDaniel's analysis was the City of Chicago. And  
17 I apologize for that.

18 BY MS. SODERNA:

19 Q With that in mind, could you accept,  
20 subject to check, that regarding the Chicago areas  
21 where market -- where U.S. Energy purports to be  
22 marketing the following week in those e-mails,



1     that -- of the 13 ZIP codes targeted most heavily,  
2     the credit acceptance ratios range from a high of  
3     53.70 percent to a low of 31.54 percent?

4           A     Well, I understand what you're telling me.  
5     I'm not going to agree that that's the case.  If we  
6     want to do it subject to check, then that's fine.  
7     But I understand you're presenting with information,  
8     but I can't validate it here in front of us unless  
9     everybody wants to wait for a while.

10                   So I'm happy to continue with the  
11     understanding that I don't agree with what you're  
12     saying because I can't confirm what you're saying.

13           Q     Okay.  Fair enough.

14           A     Is that fair?

15           Q     That's fair enough.

16                   In your rebuttal testimony, you  
17     purport to refute the allegation that U.S. Energy's  
18     marketing efforts target low-income areas by  
19     presenting the results of your own analysis of  
20     contracts signed in the City of Chicago; right?

21           A     Yes.

22           Q     And let's refer to that, which is -- I

1 believe you attach it as an exhibit, right, to your  
2 rebuttal testimony? Let me find that.

3 I think it is -- you know what? I  
4 don't think you did attach it to your rebuttal  
5 testimony. I think you refer to it in your rebuttal  
6 testimony, but -- do you know if you attached a graph  
7 to your rebuttal testimony? I'm sorry that I  
8 don't --

9 A I know it's in documents somewhere. I'm  
10 just not sure if it is or not.

11 Q I thought you did attach it.

12 MR. McMANAMAN: There is a graph. I don't know  
13 if it's the one that you're holding. Let me just --

14 JUDGE GILBERT: Let's go off for a moment.

15 (Whereupon, a discussion was had  
16 off the record.)

17 JUDGE GILBERT: We're back on.

18 BY MS. SODERNA:

19 Q So referring to what you attached to your  
20 rebuttal testimony, which is Exhibit 5.7, you -- this  
21 is the result of an analysis that you had prepared  
22 under your direction that shows the Illinois contract

1 count and household income by ZIP code --

2 A Yes.

3 Q -- as of January 2008; is that right?

4 A Yes, I'd like a copy of it if somebody has

5 one. Thanks. Yes, that's correct.

6 Q So this graph references income levels on

7 the far right from zero to \$60,000; isn't that right?

8 A Yes, it does.

9 Q But this graph doesn't represent every ZIP

10 code in Chicago, does it?

11 A I don't recall if it did or not. I thought

12 it --

13 Q We did our own analysis and we discovered

14 that it actually does not. It appears to only

15 include those ZIP codes where the contracts have been

16 signed. Is that your recollection?

17 A That probably sounds correct, yes.

18 Q And referring back to Mr. McDaniel's

19 Exhibit 8.3, which I showed you before. And in that

20 exhibit he identified the highest median income and

21 lowest median income ZIP codes in Chicago. Do you

22 see that?

1           A     Yes, I do.

2           Q     And accepting of course, subject to check,  
3     that the information presented on the exhibit is  
4     accurate, would you agree that none of the ten  
5     highest median ZIP codes are represented on your  
6     graph?

7           MR. McMANAMAN:   You're saying none of the ten  
8     ZIP codes represented in Mr. McDaniel's exhibit are  
9     in Mr. Potter's exhibit?

10          MS. SODERNA:   Right.

11   BY MS. SODERNA:

12          Q     Ten of the highest median income ZIP codes  
13     represented in Exhibit 8.3 -- right -- Mr. McDaniel's  
14     Exhibit 8.3 are represented on your graph; right?

15          A     I don't see them there.

16          Q     Okay.   Thank you.

17                     Okay.   Moving on to another topic if  
18     you're ready.

19                     As we've heard through other Company  
20     witnesses, sales agents are compensated based purely  
21     on commission and other incentive programs.   Is that  
22     your understanding?

1           A     That's correct.

2           Q     And the Company stated in response to Staff  
3 DR CSD 1.06 that it does not monitor performance by  
4 attending at-doors with contractors.

5           A     I'm sorry. Repeat that again.

6           Q     The Company responded to a question about  
7 supervision of contractors that it does not monitor  
8 performance by attending at-doors with contractors.  
9 Are you familiar with that response?

10          A     The Company doesn't.

11          Q     Right. That was the Company's response.

12          A     Okay.

13          Q     And do you believe that was an accurate  
14 statement as it was affirmed by Mr. Stiles on June  
15 20th, 2008?

16          A     I think it's generally accurate.

17          Q     So distributors -- regional distributors,  
18 they don't conduct in-field training either as  
19 testified by Mr. Hames and Mr. Nicholson this  
20 morning -- or yesterday; would you agree?

21          A     I don't know.

22          Q     You don't know if distributors conduct

1 in-field training?

2 A I don't.

3 Q In response to CUB 4.24, the Company stated  
4 that the only instances where head office personnel  
5 accompanied sales contractors in the field for any  
6 purpose occurred before January 2007, and that there  
7 are no documents regarding these field visits. Is  
8 that your understanding?

9 A Yes, that's correct.

10 Q So at the time of this response no one from  
11 the Company, including regional distributors,  
12 accompanied sales agents during their door-to-door  
13 sales activity -- I'm sorry -- with the exclusion of  
14 regional distributors, which you already said you  
15 aren't familiar whether or not they attend in-field  
16 training. No one from Corporate had ever attended  
17 door-to-door sales activity with sales agents; is  
18 that right?

19 A I can't comment on that. If that's what  
20 the response was, then that's what the response was.

21 Q Is that your understanding of -- I'm asking  
22 you what your understanding is of the --

1           A     The response?

2           Q     No, I'm asking what your understanding is  
3     of whether anyone from Corporate --

4           A     I don't have --

5           Q     -- participated in in-field training with  
6     sales agents?

7           A     I don't know firsthand if they did or  
8     didn't.

9           Q     And you wouldn't know if anyone attended  
10    door-to-door training with any sales agents for any  
11    reason?

12          A     Not at that time, no.

13          Q     In your rebuttal testimony you state that  
14    staff from the Sales and Marketing Department have  
15    always traveled to the Illinois offices on a regular  
16    basis and conducted general reviews of the practices  
17    and materials at each office; is that right?

18          A     Yes, that's correct.

19          Q     And the scope of these visits, you claim,  
20    included field training and shadowing; right?

21          A     Yes, that's correct.

22          Q     You can't identify any particular instances

1 of field training or shadowing; right?

2 A I cannot, no.

3 Q And, in fact, you attach, I think, to your

4 rebuttal testimony and I think you include an

5 attachment that references visits from Corporate to

6 the Illinois sales offices; right?

7 MS. NAUGHTON: 5.1.

8 THE WITNESS: Yes.

9 BY MS. SODERNA:

10 Q Right. And I don't think we need to

11 necessarily explore the whole exhibit other than a

12 general question that is it your understanding

13 that -- were any of those visits -- did any of those

14 visits include field training and shadowing of sales

15 agents?

16 A I don't have the details of each of those

17 visits.

18 Q You earlier said you weren't aware of any

19 situation where --

20 A Personally.

21 Q -- attended in-field training or shadowing.

22 So --



1           A     That's correct.

2           Q     -- to your knowledge, it hasn't ever  
3 occurred; right?

4           A     That I'm aware of. I don't know if it has  
5 or has not occurred.

6           Q     You just don't know?

7           A     Right.

8           Q     And with regard to the visits in your  
9 Exhibit --

10          MS. NAUGHTON: 5.1.

11          BY MS. SODERNA:

12          Q     -- 5.1, you testified that the reason for  
13 these visits vary in including introducing new  
14 products, implementing new policies, conducting  
15 audits, providing sales support, ensuring compliance,  
16 executing changes required by tariff rule and law,  
17 and generally assisting the sales office in their  
18 day-to-day operations; right?

19          A     Yes, that is correct.

20          Q     Is it true that Mr. Paul Goddard, the  
21 former vice president of regulatory that we discussed  
22 earlier -- who we discussed earlier, visited all five

1 of the Chicago sales offices in early February 2008?

2 A To my knowledge, yes.

3 Q And are you aware that during these office  
4 visits Mr. Goddard discovered documents that he  
5 determined were unapproved?

6 A I'm aware of that.

7 Q And included in this group of unapproved  
8 documents were Nicor Gas and Peoples Gas bills;  
9 right?

10 A I believe that's correct, yes.

11 Q And also various types of training  
12 documents; is that right?

13 A I'm not -- I remember the bills. I'm not  
14 sure what else may have been found.

15 Q Well, Miss Alexander actually attaches to  
16 her testimony, which I assume that you've reviewed  
17 since you responded to it in your rebuttal, with --  
18 and I can show you some copies to jog your memory --  
19 with specific documents that the Company claimed were  
20 just discovered in those visits and that were  
21 determined to be unapproved. And let me just show  
22 you one example.

1           MR. McMANAMAN:   What exhibit is this one,  
2   Julie?

3           MS. SODERNA:   This would be Barbara's 1.3.   And  
4   this would be the second page in that -- sorry.   I'll  
5   show the first and second page, which is the whole  
6   exhibit.

7           THE WITNESS:   Okay.

8   BY MS. SODERNA:

9           Q   And you can tell me if you recall reviewing  
10   those documents?

11          A   I do, yes.

12          Q   And those look like training material,  
13   don't they?

14          A   Well, it references training on it or  
15   training meetings.   They're materials.   I don't know  
16   if they're actual training materials and such.

17          JUDGE GILBERT:   Let's be clear about what  
18   exhibit we're talking.

19          MS. SODERNA:   This is Barbara Alexander's  
20   Exhibit 1.3, and it consists of two pages.   I don't  
21   know if I have an extra copy.   Do you need one?

22          JUDGE GILBERT:   No, that's all right.   But it

1 will be in the record, not as Barbara Alexander's  
2 exhibit, but as --

3 MS. SODERNA: No, I won't introduce this as a  
4 cross-exhibit.

5 JUDGE GILBERT: That's not my point. At a much  
6 more elementary level than that. What do you call  
7 CUB and AARP collectively?

8 MS. SODERNA: Consumer Groups.

9 JUDGE GILBERT: So this is CG Exhibit 1.2.

10 MS. SODERNA: Right. Sorry. Yes. Thank you.

11 MR. McMANAMAN: 1.3.

12 JUDGE GILBERT: 1.3.

13 MS. SODERNA: Which will hopefully be admitted  
14 later.

15 BY MS. SODERNA:

16 Q And so on this material it indicates items  
17 needed for field training and includes utility-style  
18 work pants. Do you see that?

19 A I see it.

20 Q So these documents were discovered when  
21 Mr. Goddard visited the offices that -- we  
22 established that; right?

1           A     Yes.

2           Q     And he determined them to be unapproved; is  
3     that right?

4           A     That's correct.

5           Q     And is that -- is it the Company's policy  
6     not to allow unapproved documents at sales offices;  
7     is that accurate?

8           A     Not to allow unapproved -- yes, that's  
9     correct.

10          Q     That is, unapproved documents are not  
11     allowed in the sales office?

12          A     That would be correct, yes.

13          Q     And after he discovered these documents, he  
14     destroyed them; is that right?

15          A     Yes.

16          Q     Or at least most of them, not all of them  
17     clearly.

18          A     No.

19          Q     But am I correct that -- let me back up.  
20                         Yesterday when I asked Mr. Hames and  
21     Mr. Nicholson if they remembered Mr. Goddard finding  
22     unapproved documents in their offices, they said

1       "no."

2           A     Okay.

3           Q     So I found that a little strange

4       considering the Company provided more than 160 pages

5       of documents that it considered unapproved from each

6       of the five sales offices, that's my understanding;

7       is that correct?

8           A     I don't know.

9           Q     Well, the Company responded to CUB's DR --

10          A     May I -- yeah, let me rephrase. I can't

11       confirm.

12          Q     Do you know who produced the exhibits that

13       were provided in response to CUB 2.16?

14          A     Not off the top of my head.

15                       What I'm saying, Julie, if this

16       helps -- I apologize -- Miss Soderna, is if it's been

17       provided to you in the response and signed off, then

18       that, you know, subject to check, is what was found.

19          Q     Okay.

20          A     What I'm trying to say is I don't recall

21       all of the stuff that was in there or what was in

22       there.

1 Q And that's okay.

2 A Is that fair?

3 Q For purposes of my question that's not  
4 necessary. I guess what I'm getting at is do you  
5 know if any of the contractors -- sales contractors  
6 or regional distributors faced any consequences based  
7 on discovery of these unapproved documents?

8 A What I do understand at the time occurred  
9 is that the offices were audited in whole, end to  
10 end. All the agents were pulled off the streets and  
11 retrained with -- from people from head office  
12 directly.

13 Q I'm sorry. One second. All of the  
14 agents --

15 A Were pulled off the street.

16 Q In every area of Illinois?

17 A Yes, that's correct, and underwent a  
18 retraining program again with people from head  
19 office. And I know that there were a number of  
20 changes in management at the time. As well as I'm  
21 not sure exactly what occurred within the field as  
22 far as what other consequences were enacted on any of

1 the agents or the regionals.

2 Q I'm really confused because I find it hard  
3 to believe that Mr. Hames and Mr. Nicholson would not  
4 have recalled of this activity ensuing from  
5 Mr. Goddard's visit that you're describing.

6 And I guess you can't purport to  
7 testify for them, but I wasn't aware that this  
8 occurred and I'm struggling to understand it.

9 MR. McMANAMAN: Judge, I'm going to object to  
10 this line. If Counsel's struggling with it, she  
11 should've asked those questions yesterday when the  
12 witnesses were present.

13 MS. SODERNA: I did ask the question and they  
14 said they didn't recall Mr. Goddard finding any  
15 unapproved documents. That's what they testified to.

16 MR. McMANAMAN: But she didn't show them the  
17 documents that she purports to have received from  
18 their office.

19 JUDGE GILBERT: Maybe we're missing the point  
20 here anyway.

21 MS. SODERNA: I can move on.

22 JUDGE GILBERT: Yeah, well, at the very least I



1     can say no question was asked of the witness.  It was  
2     an expression by Ms. Soderna of what she was  
3     thinking.  And so without a question to object to,  
4     let's just go ahead.

5     BY MS. SODERNA:

6             Q     I guess, let's phrase it this way:  What  
7     you just described to me sounds to me -- and maybe  
8     it's a matter of characterization, but it sounds to  
9     me like that pulling contractors off the street would  
10    constitute disciplinary action; wouldn't you agree?

11            A     Yes, or -- yes, well, you could look at it  
12    that way.

13            Q     Because in response to Staff DR CSD 5.20  
14    the Company explained that no disciplinary was taken  
15    as a result of Mr. Goddard's visits because not every  
16    instance of locating an unapproved or outdated  
17    document warrants discipline.  Are you familiar with  
18    that response?

19            A     I'm not.  But...

20            Q     I can find it for you.  So I'll introduce  
21    this as CUB Cross-Exhibit 12.  And this is the  
22    Company's response to Staff Data Request CSD -- there

1 are several responses from the fifth set on this  
2 document. But I'll be referring you to 5.20, so if  
3 you want to take a second and review that and let me  
4 know when you're ready.

5 (Whereupon, CUB Cross-Exhibit  
6 No. 12 was marked for  
7 identification.)

8 BY MS. SODERNA:

9 Q Okay. And in that response it also states  
10 that Mr. Goddard determined that no consequences were  
11 warranted. Do you see that?

12 A I do.

13 Q So is it the case that someone else at  
14 Corporate determined that the sales agents should be  
15 pulled off the streets after a conversation with  
16 Mr. Goddard?

17 A Well, I think, just to clarify the context  
18 of the question, is retraining or retraining a  
19 disciplinary action? In response that's one of the  
20 many consequences implemented when we have retraining  
21 or coaching needed in response to allegations.

22 In the case where we found unapproved

1 materials there, it wasn't discipline against the  
2 agents per se. It was, I think, a prudent decision  
3 to make sure that we pulled everybody and retrained  
4 them all to make sure that they understood and were  
5 refreshed on all of our policies.

6 So I'm not sure -- and, perhaps, maybe  
7 you can explain more what the concern is.

8 Q So what I'm hearing is that the resulting  
9 actions of pulling the sales agents off the street  
10 you don't necessarily consider disciplinary actions;  
11 right?

12 MR. McMANAMAN: Object --

13 THE WITNESS: Not in that case, but I --

14 MR. McMANAMAN: Go ahead. I'm sorry.

15 THE WITNESS: -- no, it's just not in that  
16 case. It was -- we found unapproved materials. I  
17 think it was a prudent decision to pull them all in  
18 and retrain them.

19 BY MS. SODERNA:

20 Q Okay. But isn't it the regional  
21 distributor's job to manage the sales office. Didn't  
22 we go over that earlier?

1           A     Yes, we did.

2           Q     Which includes --

3           A     Under the direction of our sales and

4     marketing people, yes.

5           Q     And that -- the job of the regional

6     distributor as Mr. Hames and Mr. Nicholson testified

7     to is -- I believe Mr. Nicholson testified that when

8     new materials come in --

9           A     Right.

10          Q     -- old materials are destroyed. That's the

11     policy of the Company; right?

12          A     Yes, that's correct.

13          Q     And so I guess I'm asking wouldn't the

14     regional distributors who are responsible for the

15     materials in their offices be made aware that the

16     materials were unapproved?

17          A     Well, I think that would make sense, yes.

18          Q     But that's not what happened in this case?

19          A     I don't know.

20          Q     Okay. Now, you know I just asked you a

21     question about the regional distributors and they're

22     expected to destroy old sales material when new sales

1 material comes from Corporate, that's your  
2 understanding?

3 A I'm sorry. Say that again.

4 Q Regional distributors are expected to  
5 destroy old sales material when new sales material  
6 comes in from Corporate; right?

7 A That's correct, yes.

8 Q But in response to CUB 2.0 the Company  
9 maintains that they have no current applicable  
10 retention or destruction policy relating to training  
11 materials disseminated to sales offices. So would  
12 you agree that that is, in fact, the policy, that  
13 there is no policy?

14 A I would disagree with that.

15 Q So that response was in error?

16 A I can't see the response, but the context  
17 of the response was there -- I'm not sure if perhaps  
18 it was their written policy. I'm not sure. I don't  
19 believe I signed off on that answer or reviewed it.

20 MR. McMANAMAN: You know, Judge, maybe if I can  
21 just point out because this seems to be a recurring  
22 problem. If the attorneys have questions for this

1 witness about a particular data response, I think it  
2 would be appropriate to show the witness the data  
3 response. Because, you know, one of the things I  
4 think that's being implied here is that this witness  
5 doesn't know or hasn't studied enough or doesn't have  
6 a command over his own business enough to be able to  
7 answer these questions.

8                   And one of the things that's not  
9 apparent in the record is the fact that when we're  
10 referring to the data responses from CUB and ICC  
11 Staff, we're talking about probably over 200 separate  
12 data requests. And behind each one of those data  
13 requests probably thousands, if not tens of thousands  
14 of documents. So I just want to make that point for  
15 the record and make that suggestion that -- I think  
16 it would streamline things.

17           MS. SODERNA: And point well taken. I  
18 apologize.

19 BY MS. SODERNA:

20           Q I have it right here for you if you want to  
21 take a look. And this is CUB 2.01, which begins at  
22 the bottom of the page and the answer is at the top

1 of the next page. Let me know if I've fairly  
2 summarized it or if you'd like to clarify.

3 A I don't think you've correctly  
4 characterized. It very clearly states in the  
5 response that when new materials are sent to the  
6 office, the old materials are to be destroyed when  
7 new versions are sent, marketing materials were sent.  
8 When they received new materials, it says, they're  
9 requested to destroy the old ones.

10 Is that now your -- and I apologize,  
11 maybe I missed your question.

12 Q Yeah, and maybe the confusion is because it  
13 also says very clearly, There is no current  
14 applicable retention or destruction policy.

15 A Well, I would read this to say that there  
16 is no other policy other than that when you send in  
17 materials, the older -- the old ones are destroyed.  
18 That's what it says right in it.

19 I'm not sure -- as I say, maybe it  
20 could have been worded differently, but I think it's  
21 clear that -- you know, maybe that's what it was  
22 intended by the wording. I mean, it says right in it

1     that when new materials come, the old ones get  
2     destroyed. And since that time we've actually not  
3     only just allowed them to be destroyed, but we've  
4     actually engaged a shredding service and they're  
5     actually shredded, not just thrown out.

6           Q     Can you explain to me what the sentence  
7     means, There is no current applicable retention or  
8     destruction policy. What would that mean if what  
9     you're saying is true?

10          A     Well, I can't comment; but I -- well, I  
11     think if --

12          MR. McMANAMAN: Judge, I'm just going to object  
13     that it calls for speculation.

14          JUDGE GILBERT: Let's do this: The data  
15     requests, which is what? CUB 2.01.

16          MS. SODERNA: 2.01.

17          JUDGE GILBERT: 2.01 was given to him as CUB  
18     12; is that right?

19          MS. SODERNA: Well, I actually hadn't marked it  
20     yet, but I think it probably will serve the record if  
21     we did mark it as CUB -- the prior response was to  
22     CSD 5.20.



1 JUDGE GILBERT: And those are Staff data  
2 requests.

3 MS. SODERNA: This would be marked as CUB  
4 Cross-Exhibit 13. If it makes sense -- considering  
5 we've been discussing it, it probably makes sense to  
6 mark it as a cross-exhibit.

7 JUDGE GILBERT: Here's what I'm thinking:  
8 You've given him one of your data requests and you're  
9 essentially saying, Defend the answer to the data  
10 request. Can you tie it to the testimony that he's  
11 presented in the case so I know why we're even doing  
12 this?

13 MS. SODERNA: I believe he testified about the  
14 visit by Mr. Goddard. But I would have to look for  
15 that. If you just give me one --

16 MS. NAUGHTON: Judge, can we take a quick  
17 break?

18 JUDGE GILBERT: Let's be back by 11:15.  
19 (Whereupon, a recess was taken.)

20 JUDGE GILBERT: We're back on the record.

21 BY MS. SODERNA:

22 Q So I won't belabor the document destruction

1 policy any further other than to confirm your  
2 understanding that the Company's policy, as you  
3 stated earlier, is to destroy old materials when new  
4 materials come in; right?

5 A Correct.

6 Q Actually, let me ask you this: How often  
7 does Corporate review the sales material in the  
8 distribution offices in Chicago?

9 A Currently we do it once a month.

10 Q Was that the case before Mr. Goddard's  
11 visit in February 2008?

12 A I don't recall how often, but I just know  
13 now that we're -- they're actually documented,  
14 audited and it's recorded. So we know exactly when  
15 people went in and what they did.

16 Q And did Mr. Goddard's discovery of  
17 unapproved documents in February 2008 have anything  
18 to do with that policy?

19 A Yes, generally that as well as issues that  
20 came up in that area led to the improvements of which  
21 that's just one of them.

22 Q But the Company does not have any

1 prescribed consequence for regional distributors in  
2 whose office unapproved documents would be found in  
3 one of those audits?

4 A The prescribed consequence is determined  
5 between the Company staff, and there's no set  
6 standard consequence. But there is a consequence,  
7 yes.

8 Q What type of consequence would you guess is  
9 the usual course?

10 A I have an example from another market, if  
11 that assists, that's similar.

12 Q Well, do you recall any specific  
13 consequences of Illinois distribution offices?

14 A No.

15 Q Okay. So moving on to another topic here.  
16 As hopefully you heard in my discussion with  
17 Ms. Findley, she described that, although there are  
18 general guidelines regarding allegations of sales  
19 agent misconduct, the Company addresses each  
20 allegation as something of an ad hoc approach,  
21 facts-based -- you know, based on the facts presented  
22 in each case; would you agree?

1           A     I don't think she characterized it that  
2     way; but I would agree that each allegation that  
3     comes in from a customer is reviewed, yes.

4           Q     Well, she testified actually -- and tell me  
5     if you're familiar with this testimony -- that much  
6     of the decision-making regarding responding to  
7     customer allegations and complaints is fact-based so  
8     there is no single decision tree or process  
9     applicable to all cases. Would you agree that's the  
10    case?

11          A     It was at the time, yes, and I believe is  
12    today as well.

13          Q     And are you familiar with the Company's  
14    Code of Conduct for sales agents?

15          A     Yes.

16          Q     Did you have a hand in drafting it, maybe?

17          A     I had a hand in it, yes.

18          Q     And if I said -- if I said "material  
19    violations of the Code of Conduct," would you  
20    understand what I meant?

21          A     I would -- I have my own interpretation of  
22    what material violations are.

1           Q     And what would that be?

2           A     Things like fraud, forgery.

3           Q     Is there anything else that you can think

4     of?

5           A     I think those are the main ones that really

6     stick out.

7           Q     Okay. And in response to one data request

8     the Company stated that it does not permit material

9     violations of its policies. And I don't think I need

10    to show you that data request to ask if you agree

11    with that statement, that the Company doesn't permit

12    material violations of its policies; right?

13          A     I recall it from yesterday, yes.

14          Q     And by that, you mean in cases where

15    forgery has been determined to be valid -- a valid

16    allegation, those sales agents would be terminated.

17    Is that the consequence?

18          A     In my view, yes. That would be my view of

19    it.

20          Q     But to some extent that is a matter of

21    interpretation of the individual and CCR that's

22    reviewing the allegation; right?

1           A     No.  Sorry.  Just restate that again, your  
2     question.  Sorry.

3           Q     Is it your understanding that the  
4     determination of valid allegations, or the -- as we  
5     heard Miss Findley, say the investigation of an  
6     allegation against a sales contractor -- it's a  
7     case-by-case basis; right?  It depends on the facts  
8     presented in that case; right?

9           A     Well, I think just to assist there's a  
10    standard -- as you know, there's a compliance matrix  
11    and there's actually a more recent one today.  
12    They're trained on how to review each complaint.  
13    There's standard guidelines they follow.  And, yes,  
14    each complaint can be different and you have to weigh  
15    what they find throughout that investigation process  
16    to determine what the consequence should be or what  
17    the determination is.

18          Q     Did you -- you mentioned the cancellation  
19    matrix and we introduced that with Miss Findley.  And  
20    did you have a hand in drafting that matrix?

21          A     I had a hand in the content of it.  I  
22    didn't actually physically draft it.

1           MR. McMANAMAN:   And just for the purposes of  
2   the record, can we just refer to what exhibit that  
3   is?

4           MS. NAUGHTON:   CUB Cross-Exhibit 4.

5           MS. SODERNA:   Sorry.   That was CUB  
6   Cross-Exhibit 4.   And at the time I introduced I --  
7   based on the fact that it actually is attached to  
8   Miss Alexander's rebuttal testimony --

9           MR. McMANAMAN:   So do you want to just make  
10   sure that you're talking about the same with the --

11          MS. SODERNA:   Sure.

12          MR. McMANAMAN:   Here it is.   Well, you want me  
13   to show it to him?

14          MS. SODERNA:   Is that an extra copy?

15          MR. McMANAMAN:   Well, it's mine; but I'll grab  
16   it back as soon as he's done.

17          THE WITNESS:   This isn't the cancellation  
18   matrix that you've handed me.   I apologize.   That's  
19   what I thought you said.

20          MS. NAUGHTON:   Penalty.

21          THE WITNESS:   That's what I have.   But you  
22   said -- I thought you said "cancellation matrix."

1 MS. LIN: I thought you said "penalty."  
2 THE WITNESS: I could be wrong.  
3 MS. SODERNA: I thought -- I'm sorry. Perhaps  
4 we can read it back because I don't honestly --  
5 (Whereupon, the record was read  
6 as requested.)  
7 MS. SODERNA: Okay. Thank you.  
8 BY MS. SODERNA:  
9 Q So you're correct that document is not the  
10 cancellation matrix. And by "cancellation matrix,"  
11 what cancellation matrix -- what's -- can you  
12 describe the document you're referring to so that  
13 we're clear. Yeah, I'm not exactly sure what you're  
14 referring to.  
15 A It was attached. It's part of -- it's  
16 somewhere in that enormous pile of paper. It's a  
17 matrix that talked about when we apply our  
18 cancellation policy, the 30 days after and all that.  
19 Q Right. Fair enough.  
20 And there was a bit of confusion there  
21 because I -- when I was asking you questions I was  
22 actually talking about not when customers are allowed



1 out of their contracts without a termination fee, but  
2 I'm asking you about how the Company determines  
3 whether or not there was a valid allegation?

4 A Okay.

5 Q And what the ensuing consequence would be  
6 to that particular sales agent?

7 A Right.

8 Q And as I discussed with Miss Findley,  
9 you're aware, aren't you, that there is a -- and I  
10 believe it's called the compliance database -- where  
11 customer contacts are logged; right?

12 A Correct.

13 Q And those -- the compliance database  
14 includes those customer contacts regarding  
15 allegations against sales agents particularly; right?

16 A That is correct.

17 Q When asked in -- and tell me if you're  
18 familiar with this response and I can show it to you  
19 if you're not. When asked by CSD 2.06 to provide the  
20 total number of complaints the Company received  
21 via -- I think, it was e-mail, mail and phone, the  
22 Company responded that it does not log customer

1 contacts by category. Are you familiar with that  
2 response? Does that ring a bell?

3 A Sorry. Which one was it?

4 Q 2.06 CSD, which I don't believe you have in  
5 front of you.

6 A No, I'm sorry, I don't.

7 Q Do you?

8 A I do not. Sorry.

9 Q We'll get it.

10 MS. SODERNA: So this I'll mark as CUB  
11 Cross-Exhibit 14. It was the data request response  
12 to 2.01 which I had marked as 2.13 but don't believe  
13 I will request for admission of that exhibit.

14 JUDGE GILBERT: Was it, in fact, marked? I  
15 kind of remember that.

16 MS. SODERNA: I actually wrote on it. But...  
17 Yeah, I did mark it; but I don't believe I --

18 JUDGE GILBERT: Well, it was marked for  
19 identification as CUB Cross 13.

20 MS. SODERNA: It was, but I don't believe I  
21 served it. I don't believe I handed it out to any of  
22 the parties because we ended up getting interrupted.

1     So let's place the markation of CUB Cross-Exhibit 13  
2     on this document since that one was not used in any  
3     way on the cross-examination.

4             JUDGE GILBERT:   Okay.   Describe what this  
5     document is now.

6             MS. SODERNA:   This document is the Company's  
7     response to CUB 2.06 -- I'm sorry -- to Staff CSD  
8     2.06.

9             JUDGE GILBERT:   All right.   So that document  
10    will be CUB Cross-Exhibit 13.   Anything else that may  
11    have been referred to on the record as CUB  
12    Cross-Exhibit 13 is not CUB Cross-Exhibit 13.   This  
13    is CUB Cross-Exhibit 13.

14                               (Whereupon, CUB Cross-Exhibit  
15                               No. 13 was marked for  
16                               identification.)

17    BY MS. SODERNA:

18             Q     And the 2.06 is on the bottom.   So to  
19     clarify that, the request asks for the number of  
20     complaints U.S. Energy received directly from  
21     customers through written notice, phone calls or  
22     e-mail.   Do you see that?

1           A     Yes, I do.

2           Q     And do you see the Company's response says  
3     that U.S. Energy does not log customer contacts by  
4     category. U.S. Energy does not know of any  
5     reasonable method to obtain this information. Are  
6     you familiar with that response?

7           A     I see it here, yes.

8           Q     Do you believe that's accurate?

9           A     It's not accurate now.

10          Q     Okay. And, in fact, after this response  
11     was served in June, I believe, of 2008, on  
12     December 10th, 2008, the Company provided information  
13     in response to a CUB data request regarding the  
14     compliance database. Are you familiar with that  
15     response?

16          A     Most likely.

17          Q     Actually, let me ask you, are you familiar  
18     with the compliance database?

19          A     Yes, very much so.

20          Q     And according to the Company's response --  
21     and tell me if this is accurate -- the database logs  
22     all sales related and nonsales-related feedback

1 received from third parties including all complaints,  
2 billing inquiries, general inquiries, and requests  
3 for information as well as any sales-related  
4 inquiries or feedback received from customers. Is  
5 that your understanding of the compliance database?

6 A That's correct.

7 Q And on December 12, 2008, the Company then  
8 supplemented its responses to CUB Data Request 2.24  
9 with thousands of pages of what are called allegation  
10 summary data. Do you recall those documents?

11 A Yes.

12 Q Are you familiar with those types of  
13 documents?

14 A Yes, I am.

15 Q And the allegation summary documents  
16 together detail thousands of allegations by customers  
17 regarding various misconduct by sales agents; is that  
18 right?

19 A It documents allegations by customers for  
20 sales agents, yes.

21 Q Okay. And is it your understanding that  
22 these forms are organized by sales contractor for

1 certain periods of time?

2 A Yes, they can be.

3 Q And without going into the specific types  
4 of allegations, which I believe are proprietary, I  
5 think it -- suffice it to say that there are 19  
6 different classifications of allegations detailed on  
7 each form; is that right?

8 A About that today, yes.

9 Q And the Company assigns point values to  
10 each allegation that's determined by the Company to  
11 be valid pursuant to a compliance matrix. Are you  
12 familiar with that?

13 A At the time, yes, that's correct, I  
14 believe.

15 Q And the Company further provided in  
16 response to CUB Data Request 6.32 thousands of  
17 letters that go to contractors with validly  
18 determined allegations informing the contractor of  
19 potential consequences. Is that your recollection?

20 A Yes, it is.

21 Q And are you familiar with those types of  
22 documents?

1           A     Yes, I am.

2           Q     Did you review Miss Alexander's surrebuttal  
3 testimony? I can't remember if --

4           A     Yes, I did.

5           Q     -- you're familiar with it.

6           A     Yes, I am.

7           Q     And I forget, do you have that in front of  
8 you or no?

9           A     No, I don't.

10          Q     Well, I guess, I can ask you, subject to  
11 check, Miss Alexander in that surrebuttal testimony  
12 discussed the -- discussed this evidence that I just  
13 referred to.

14          A     Okay.

15          Q     And her analysis of it, do you recall that  
16 generally?

17          A     Generally, yes.

18          Q     And she had an analysis performed under her  
19 direction that aggregated this data according to the  
20 class of -- the classification of allegation and the  
21 number of contractors. Is that your recollection?

22          A     I know that she did some data and

1 provided -- I can't remember the exact details of  
2 what's in it.

3 Q I can show you her testimony. And actually  
4 more particularly, my interest is in the summary of  
5 this analysis, which is presented as an attachment to  
6 her surrebuttal testimony -- which are summarized in  
7 her testimony, which I'll show you to refresh your  
8 recollection.

9 So it's on Pages 24 and 25, and  
10 there's a number of blank spaces because what was  
11 previously marked as confidential is now considered  
12 public so we can talk about this publically.

13 MR. McMANAMAN: Julie, can I just ask you, what  
14 page of the testimony does it relate to?

15 MS. SODERNA: 24 and 25, and that's where she  
16 summarizes the data presented in these allegation  
17 summary sheets.

18 JUDGE GILBERT: Let's go off the record for a  
19 moment.

20 (Whereupon, a discussion was had  
21 off the record.)

22 JUDGE GILBERT: Back on the record.



1 BY MS. SODERNA:

2 Q So, Mr. Potter, have you had a chance to  
3 review that testimony I referred to --

4 A Yes, I did.

5 Q -- of Miss Alexander?

6 And she discusses her -- the analysis  
7 that she prepared on these allegation summaries and  
8 reveals that her analysis shows there was a total of  
9 1730 validly determined allegations relating to 258  
10 different sales agents. Would you agree with that  
11 testimony?

12 A Yes, that's what she says.

13 Q So you accept that as an accurate  
14 representation of the allegation data provided?

15 A I didn't say that. I understand that's  
16 what she's reported in her testimony -- her rebuttal  
17 testimony.

18 Q Do you have any reason to challenge these  
19 numbers?

20 A That I didn't verify it myself.

21 Q And of those 1730 validly determined  
22 allegations, the Company reported -- and in those

1     allegations summary sheets, it shows under  
2     Miss Alexander's analysis that only 15 contractors  
3     received any consequences, two were terminated, one  
4     was suspended, one was required to undergo field  
5     training and seven were fined \$25. Do you have any  
6     reason to challenge those numbers?

7           A     I do. As I said, I didn't look at it  
8     myself. I'm not sure what she refers to as  
9     consequences. And I can't comment on whether that's  
10    accurate under the sample she pulled or whether she  
11    looked at every one of them.

12          Q     Do you feel confident the allegation  
13    summary sheets accurately present the actual  
14    allegations and consequences that occurred?

15          A     I believe they did if I -- and I need to  
16    just check. I believe we provided all or only  
17    some -- I need to review 632 again. I think that's  
18    where it came from if that's correct.

19          Q     Right.

20          A     Assuming, though, that the -- it provided  
21    all, I think as Mrs. Findley testified yesterday,  
22    some agents will get a number of letters. A lot of

1     them are automatically system generated, which means  
2     that if you looked at one, it may not have captured  
3     the entire consequence related to the same action.

4                     There also are a number of some  
5     reports and manually generated letters in response to  
6     that because Legacy information -- or the way the  
7     system has been built and enhanced over the years,  
8     some of the functionality still remained.

9                     So as she mentioned yesterday in the  
10    example that was brought up by the ICC attorneys,  
11    that was one letter. There actually would have been  
12    another letter. So I'm not sure how she's  
13    accumulated that or tallied it. So other than that,  
14    I can't tell you if it's accurate.

15            Q     Okay. So let's move on to --

16            A     And I apologize. Just one other thing as I  
17    think just to -- as Miss Findley I think testified  
18    well yesterday, is that a valid instance of  
19    misrepresentation under the compliance matrix and the  
20    criteria used at the time did not identify that every  
21    time somebody was 100 percent found that it  
22    definitely happened.

1                   It was based on a number of criteria  
2    which she reviewed in detail yesterday to determine  
3    the likelihood or whether some activity should taken  
4    as a result. And that process has since been changed  
5    to be a little less objective and a little more  
6    factual in the current process and management matrix  
7    that we use today.

8           Q     Okay. And is it -- in your opinion, would  
9    you -- could you conceive of a situation where an  
10   allegation that was determined to be not valid by the  
11   Company, in fact, was a true instance of  
12   misrepresentation? Could you imagine a situation  
13   like that?

14          A     I could imagine that you get a lot of  
15   instances where you have a customer who states one  
16   thing and then an agent who states another and based  
17   on that information, the FPRC call, and a number of  
18   other things we try to make a reasonable guess -- or  
19   decision or determination at the time, did the  
20   customer -- was he actually told he was promised  
21   savings? Or did the agent just say you may save or  
22   there's a potential for savings or you can save?

1 Those kind of things you can't determine. So it's  
2 based on some of the factors that Mrs. Findley  
3 mentioned yesterday --

4 Q Right.

5 A -- we could go through to try to determine  
6 the reasonableness of what action to take with an  
7 agent.

8 And as I say, that's moved more to a  
9 fact-based, less subjective measure now with specific  
10 penalties for every occasion.

11 Q Every occasion found to be valid?

12 A That is correct.

13 Q So there's still a subjective determination  
14 of whether the complaint is valid?

15 A It's much more minimal and it's --  
16 basically it's a -- you know, they get a fine each  
17 time and they get terminated within three or four  
18 occasions.

19 Q Does that comply with the matrix we just  
20 talked about?

21 A That's an old matrix. There's -- which was  
22 in effect at the time.

1           Q     But Miss Findley indicated in her cross,  
2     did you not hear that part, that that cancellation  
3     matrix even at the time wasn't necessarily followed;  
4     right?

5           A     The cancellation matrix at the time prior  
6     to that version you have and shortly thereafter is  
7     a -- it's a guideline. And as I think she tried to  
8     explain, you know, although you look at the point  
9     schedules and you look at the 40 points and the 20  
10    points to get suspended, et cetera, it was a  
11    guideline. CCR has complete latitude to override  
12    that guideline.

13                     So, for example, it's not probable  
14    that an agent would actually be found to be -- have  
15    valid misrepresentations 40 times. They would have  
16    been terminated a lot earlier.

17                     There's a whole lot of different -- as  
18    you mentioned, 19 different categories of, you know,  
19    roughly allegation types from -- guy came at the  
20    wrong time and it was inconvenient to he forgot to  
21    leave the terms and conditions -- which is not  
22    required by law, I don't believe here -- but we do it

1 at the door as opposed to later, to things like  
2 misrep complaints, et cetera, they've all garner  
3 points. And we've moved away from that system to a  
4 more specific consequence in relation to each of  
5 those.

6 So not to -- in my own words what --  
7 and as I believe Miss Findley says yesterday, the  
8 guideline there is used as a basis and they move from  
9 that depending on is it a pattern of the same, is it  
10 a number of different things? What's the severity of  
11 the incident, those kind of things which I think she  
12 captured in detail yesterday.

13 Q So despite the compliance matrix -- and  
14 earlier I think you misreferenced as the cancellation  
15 matrix, which is another document. We're talking  
16 about compliance matrix; right?

17 A Yes, that's correct. Did I do it?

18 Q There's a lot of judgment involved;  
19 wouldn't you agree?

20 A Yes, there is, or there was at the time  
21 more so.

22 Q So moving on, in your rebuttal testimony at

1 Page 45 at Line 1018 you state that -- and maybe you  
2 don't need to turn to it to understand this -- but do  
3 you recall stating that 61,216 customers signed  
4 contracts with U.S. Energy between February 2008 and  
5 November 2008; right?

6 JUDGE GILBERT: Is that number no longer  
7 confidential?

8 MR. CLANCY: Right.

9 MS. SODERNA: It's been removed.

10 THE WITNESS: I'm sorry. Which line was it?

11 BY MS. SODERNA:

12 Q Line 1018, top of 45.

13 A Okay. That's correct, 61,216.

14 Q And this number includes those contracts  
15 that were later nullified because of failed credit  
16 checks or other issues; right?

17 A I'm sorry. Say that again.

18 Q My understanding is that this number  
19 includes contractors that were -- contracts that were  
20 later nullified because of failed credit checks or  
21 other issues; right?

22 A That's correct.



1           Q     So that's a total aggregate number?

2           A     Okay.

3           Q     And then you presented in discovery in

4     response to CUB Data Request 8.30 -- which I'll get

5     in one second -- the data of residential and

6     commercial contracts that were cancelled by month

7     during the same period of time; right? Do you

8     remember that?

9           A     I believe there is data provided, yes.

10          Q     I'll get that for you for your reference.

11     So this was -- as I represented, the Company's

12     response to CUB Cross-Exhibit -- I'm sorry -- to CUB

13     Data Request 8.30.

14           MS. SODERNA: And this will be labeled CUB

15     Cross-Exhibit 14 now.

16                                 (Whereupon, CUB Cross-Exhibit

17                                 No. 14 was marked for

18                                 identification.)

19     BY MS. SODERNA:

20          Q     And this -- if you turn to the second page

21     of this exhibit. We'll get to the first page in a

22     second. But the second page shows those contracts

1 cancelled without penalty in the first table and the  
2 second table shows contracts cancelled with the exit  
3 fee applied. Are you familiar with these -- with  
4 this exhibit?

5 A I believe so, yes.

6 MR. McMANAMAN: Can you just tell us where it  
7 comes from, Julie, this exhibit.

8 MS. SODERNA: Oh, yeah. I just indicated it  
9 was the response to CUB Data Request 8.30.

10 THE WITNESS: Can I see? Can I read the 8.30  
11 so I understand what I've provided.

12 MS. SODERNA: Sure.

13 Unless you -- would you prefer I mark  
14 this additionally, or we could put this as a cover  
15 page? Maybe that makes sense.

16 MR. McMANAMAN: Sure.

17 JUDGE GILBERT: Yeah, I like that idea.

18 MS. SODERNA: That makes sense. Okay. Let's  
19 put this as -- we'll make this the first page of CUB  
20 Cross-Exhibit 14, how about that?

21 BY MS. SODERNA:

22 Q Have you had a chance to review that?

1           A     Just one more second, please.

2           JUDGE GILBERT:   While he's reviewing, I'll note  
3     for the record now that what had been distributed as  
4     a two-page document is now a three-page document and  
5     that is now denominated CUB Cross-Exhibit 14.

6           THE WITNESS:   Okay.

7     BY MS. SODERNA:

8           Q     So this data question asks questions based  
9     on that 61,000 customer number --

10          A     Right.

11          Q     -- in your rebuttal testimony; right?

12                 And so the exhibit that was provided,  
13     in response to this data request presents the  
14     total -- total cancelations -- like I said, the first  
15     table without penalty, the second table with  
16     penalty -- and separates it out by commercial and  
17     residential customers and indicates a grand total.  
18     Do you see that?

19          A     Yes.

20          Q     And under Cancelled With Penalty, the total  
21     number of customers was 35,892.   Do you see that?

22          A     Without penalty?

1           Q     Right.  In the first table.

2           A     Correct.  Yes.

3           Q     And the second table with the exit fee

4 applied, the total -- grand total, including

5 commercial and residential, was 1,047; right?

6           A     Correct.

7           JUDGE GILBERT:  Let me add just very quickly on

8 Pages 2 and 3 of this exhibit, commercial customers,

9 as I understand it, are designated under the letter C

10 and residential customer are designated under the

11 letter R; is that correct?

12           THE WITNESS:  Yes, that's correct.

13           MS. SODERNA:  Thank you for that clarification.

14 BY MS. SODERNA:

15           Q     And these tables, if you look at the note

16 below the tables, it indicates that those numbers

17 include cancelations for not passing the credit

18 check --

19           A     Correct.

20           Q     -- cancelled by the customer; right?

21           A     Yes.

22           Q     Enrollments errors, et cetera; right?

1           A     Correct.

2           Q     So would you accept, subject to check, that  
3     the addition of these two grand totals and these two  
4     tables is 36,939?

5           A     Yes. And that was without a calculator.  
6     That's correct.

7           Q     And that's subject to check; right?

8           A     Yes.

9           Q     And when you compare the total 61,216  
10    signed contracts during this same period of time,  
11    would you again accept, subject to check, that  
12    this -- that the total cancelations that we just  
13    identified amounts to 60 percent of all contracts  
14    signed from February 2008 until November 2008, either  
15    never became valid or were later cancelled; would you  
16    accept that?

17          A     Yes, that's generally correct.

18                   Well, just for clarity they were  
19    cancelled. They may have been valid or may not have  
20    been valid. Is that correct? Okay.

21          Q     Right. So this note below says,  
22    Cancelations including not passing credit check, but

1     that's actually somewhat inaccurate, right, because  
2     if they fail the credit check, then that contract  
3     never becomes valid; right?

4           A     No, it's clearly inaccurate because the  
5     cancellation is -- and I apologize. Just for clarity  
6     to help -- is that the cancellation, what it's saying  
7     is, includes not passing the credit check, which  
8     means whether it was valid or not it's captured under  
9     a cancellation code. This goes back to an earlier  
10    question about categories and how we catch -- in that  
11    cancellation it includes the ones that we cancel as a  
12    result of not passing the credit check, not just that  
13    customers call us.

14                   Does that make -- did I explain that  
15    clearly?

16           Q     Sure --

17           A     So it's cancelled for whatever reason, it  
18    just does not make it, whether the customer calls,  
19    whether we -- it gets internally and we don't pass  
20    credit, we consider it cancelled. It's just a  
21    different party cancels it.

22           Q     Right.

1                   But comparing those numbers it's fair  
2   because the 61,000 total customers includes all  
3   contracts signed?

4           A     That's correct.

5           Q     Right. Okay.

6                   So then on the first page of the  
7   exhibit I'm a little confused because it appears to  
8   be the number -- if you look in the note and you can  
9   clarity this for me -- of contracts that were  
10  cancelled due to customer dissatisfaction. And that  
11  is my guess at what that note indicates, but can you  
12  please clarify that for me.

13          A     What I recall that it should mean is it  
14  says that these -- this basically -- as you know, we  
15  give an extra 30 days after the first bill as a  
16  cancellation period. So they, in essence, get  
17  somewhere around 70 days to cancel their contracts  
18  without penalties.

19                   And so the note -- hold it up for the  
20  camera -- the numbers in the table above include only  
21  the contracts that were cancelled by the customer,  
22  which means it wasn't things that we determined to

1     cancel, through either us or through the utility --  
2     because we get drops through the utility -- from the  
3     signing date, the day they signed at the door to up  
4     to 70 days from the time it flowed. Because that  
5     basically is -- gives them the extended cancellation  
6     period in that little -- it excludes those that were  
7     not passed, that didn't pass credit checks,  
8     enrollment rejects, which are issues internally. The  
9     utility bounces back the transaction because there's  
10    data incorrect or we've transposed something or the  
11    information doesn't flow properly so we can't process  
12    the contract.

13           Q     And so -- is my understanding correct then  
14    from what you just explained that this is not --  
15    these numbers would not include contracts that were  
16    perhaps cancelled 2 years after signing the contract  
17    or some greater period of time than 70 days. Is that  
18    my understanding -- is my understanding correct?

19           A     This number, that's correct.

20           Q     But I'm also confused because in your  
21    rebuttal testimony, if you turn to Page 46, the next  
22    page from which we were just talking about, you



1     indicate that between January and December 15, 2008,  
2     there have only been 9,315 cancelations total. Is  
3     that number comparable to the 13,408, and which is  
4     more accurate?

5           A     This would probably -- and, again,  
6     subject -- I can't confirm at this point. But this  
7     would most likely be cancelations that were consumer  
8     cancelations. And I would have to verify where I  
9     pulled the data from as to whether it was post-flow  
10    or preflow or if it was outside of their cancellation  
11    period basically, what we'd seen or if that was a  
12    number -- if that number is relative to only  
13    contracts signed in 2008 or not. I can't recall  
14    where I pulled that data.

15           Q     Okay.

16           A     I just know it was pulled from reporting  
17    internally.

18                   Just give me one second, if I could...  
19    can I just have one second? Yeah, I can't provide  
20    you any further.

21           Q     Okay. Well, that -- would you be amenable  
22    to using the 13,408 number for purposes of talking

1     about customers that have actively cancelled their  
2     contracts within 70 days of flow?

3             A     Yes, I would.

4             Q     Okay. And so that number out of the total  
5     61,216 signed contracts, would you agree with me,  
6     subject to check, that that amounts to approximately  
7     22 percent cancellation rate?

8             A     That would be around that -- that would be  
9     about right.

10            Q     And you testify in that same paragraph that  
11    there were in 2008 -- the cancelations in 2008, at  
12    least at the time of that testimony, represented a  
13    significant improvement to the Company's 25,000  
14    cancelations in 2007. That's what you testify to;  
15    right?

16            A     Sorry. Just one more time.

17            MS. SODERNA: Strike that last question,  
18    please.

19                    This actually is marked confidential.  
20    I am so sorry that I did not catch that.

21            THE WITNESS: Thought it was because there  
22    was -- but I didn't --

1 MR. CLANCY: What pages?

2 MS. SODERNA: Page 46.

3 MR. CLANCY: What line?

4 MS. SODERNA: 1047, 1048.

5 MR. CLANCY: No, that was dedesignated.

6 MS. SODERNA: It was dedesignated?

7 MR. CLANCY: Right.

8 MS. SODERNA: Wonderful. Great.

9 Okay. So back -- or we never went

10 off.

11 BY MS. SODERNA:

12 Q So you testified that there were 25,000

13 cancelations in 2007; is that correct?

14 A That's what I have here, yes. That is

15 correct.

16 Q And you purport to speak for Mr. Hames and

17 Mr. Nicholson in this testimony by concluding that

18 the decrease in the number of cancelations somehow

19 represent the success of their training programs,

20 don't you?

21 A Yes, I attribute that in part there. Yes.

22 Q But in your analysis you don't take into

1 account the volume of sales activity in 2008 when you  
2 discussed the number of cancelations; right?

3 A I did not in that paragraph, no.

4 Q And, in fact, when you compare the 25,000  
5 cancelations in 2007, to the total contracts signed,  
6 which we discussed earlier in 2007, which was 130,000  
7 contracts, that actually represents an approximate  
8 19 percent complaint rate; would you accept that,  
9 subject to check?

10 A That's correct.

11 Q So while the cancellation numbers appear to  
12 have improved, the numbers themselves, the  
13 cancellation rates have actually gotten worse;  
14 wouldn't you agree?

15 A No, I would not agree.

16 Q So you don't agree that -- you know, we  
17 walked through the numbers and the 19 percent  
18 complaint rate in 2007 -- sorry -- the 19 percent  
19 cancellation rate in 2007 you don't believe compares  
20 to the 22 percent cancellation rate in 2008?

21 A I believe if we're using your -- what  
22 number are you using to make that determination?

1           Q     It's my understanding that data that the  
2     Company provided, which we discussed earlier, the  
3     total contract sign was in 2007 was 130,000; is that  
4     accurate?

5           A     That's correct.

6           Q     And the Company indicated that there were  
7     25,000 cancelations in 2007?

8           A     I'm good with you. I get that.

9           Q     So that would be in a 19 percent  
10    cancellation rate; is that fair?

11          A     I understand that. Okay.

12          Q     And then previously we walked through the  
13    complaint rate using the same analysis in 2008, which  
14    indicated a 22 percent cancellation rate.

15          A     And I apologize. What number are you using  
16    as the numbers of cancelations for '08? Are we using  
17    the 13?

18          Q     13.

19          A     Right. So there was --

20          Q     That would be assuming the 13 was accurate,  
21    right, which we went over?

22          A     Right. So that in and of itself still

1 provides for a decrease here over a year in the  
2 cancellation rate.

3 Q And how do you figure?

4 A Well, because there was about 85,000 -- in  
5 2008 there was about 85,000 contracts signed. And we  
6 had 13,000 complaints, that's a 15 percent complaint  
7 rate, which is down 5 percent from roughly 20.

8 Q Well, let's back up because it's not  
9 complaints, it's cancelations; right?

10 A I apologize. Cancellation rate. I did it.

11 Q We're comparing -- the numbers, you agreed  
12 with me, the 13,408 cancelations --

13 A Agree.

14 Q -- is directly comparable to the 61,216  
15 signed contracts because it's the exact same period  
16 of time; right? So I'm not mismatching time periods  
17 there, am I?

18 A February to November. Oh, I see your  
19 point. Over that exact same period of time.

20 Q When we're talking about not -- and so let  
21 me clarify, actually. That's a good point.

22 When I say "during 2008," I'm

1 specifically referring to February of '08 and  
2 November of '08, which is the data that was provided.

3 A Right.

4 Q With that caveat would you agree with me  
5 that the cancellation rate was actually --

6 A Would stay the same.

7 Q -- higher in 2008 for that period of time?

8 A No, they're roughly -- they're both  
9 basically 20.-something percent on this calculator.  
10 So that's generally based on those numbers it  
11 calculates to be about the same.

12 Can we agree with -- within a  
13 percentage?

14 Q Yeah, my calculation results in 19 percent  
15 for 2007 and 22 percent for 2008; but we'll leave  
16 some room for rounding there.

17 So you continue to maintain, though,  
18 don't you, that there is not necessarily a  
19 correlation between the level of cancellation and  
20 customer satisfaction because there are numerous  
21 reasons why a customer might cancel; right?

22 A Yes, there are.

1           Q     And one reason I can think of off the top  
2     of my head is instances where the customers was maybe  
3     slapped, would you agree that that's another reason  
4     customers might cancel?

5           A     I think a customer would cancel if they  
6     were, yes.

7           Q     And would you also agree that customers  
8     might cancel if they didn't understand what product  
9     they were buying?

10          A     On reviewing their decision, if they  
11     weren't sure or they didn't understand it, they can  
12     cancel, yes.

13          Q     Okay. Thank you.

14          JUDGE GILBERT: Since you paused let me ask --

15          MS. SODERNA: Yes, I have one more line to  
16     go --

17          JUDGE GILBERT: That's not what I was going to  
18     ask.

19                     Are you done with Cross-Exhibit 14?

20          MS. SODERNA: Yes.

21          JUDGE GILBERT: Okay. I have a real quick  
22     question about it. I just want to make sure I



1 understand what it is.

2 If you take a look at the single chart  
3 on what is now the second page of that exhibit and  
4 that's what you've been referring to along with  
5 Ms. Soderna, the 13,408, is that number included in  
6 the two totals on what's now Page 3 of the exhibit?

7 THE WITNESS: Yes, it is. That number would be  
8 included.

9 JUDGE GILBERT: And so some of those 13,000  
10 would fall into the top charts and some would fall  
11 into the bottom chart; is that correct?

12 THE WITNESS: They should all fall into the top  
13 chart.

14 JUDGE GILBERT: Okay. Thank you.

15 Okay. Go ahead.

16 MS. SODERNA: One second. Mr. Zermeno's here,  
17 but I have one more line of cross to go and I'm  
18 hoping that we can plow through it relatively  
19 quickly.

20 THE WITNESS: I'm going as fast as I can.  
21 Faster than I should, probably.

22 MS. SODERNA: Ditto.

1 BY MS. SODERNA:

2 Q And I'm going to ask you some questions  
3 about your comments about CUB's gas market monitor.

4 A Yes.

5 Q And you're familiar with that tool; right?

6 A I know of it.

7 Q And it's a tool that CUB uses and shows on  
8 its Website that compares the fixed-price product of  
9 various alternative gas suppliers to the regulated  
10 utilities' fluctuating PGA rate. Is that your  
11 understanding?

12 A Yes, that's correct.

13 Q And, in fact, you attached a copy of the  
14 results of U.S. Energy from CUB's gas market monitor  
15 as your Exhibit 1.1 in support of your contention  
16 that the majority of your contract offerings that  
17 have completed their terms have experienced savings;  
18 right?

19 A I believe that was a typo. Which line was  
20 that?

21 Q Oh, really? Direct at Line -- at Page 6,  
22 Lines 116, 117.

1           A     Of which one? The director or rebuttal?

2           MR. McMANAMAN: Direct.

3           THE WITNESS: I think I only have the rebuttal

4 here, Marty.

5           MR. McMANAMAN: Page 6, Line 116.

6           MS. SODERNA: I did not make -- I did not mark

7 those couple changes that you circulated. Sorry

8 about that.

9           MR. McMANAMAN: And are you saying that there

10 appears to be a typo because it should say that it --

11           MS. SODERNA: No, he says there appears to be a

12 typo. I didn't.

13           THE WITNESS: Can I just look at 1.1, please.

14                    Yeah, I believe in the testimony it

15 states -- in the paragraph it says, Historically many

16 of our customers have experienced savings over the

17 term of their contracts. That's accurate. But this

18 cannot be predicted because the future cannot be

19 predicted. That's pretty accurate and pretty

20 philosophical.

21                    I notice that the CUB Website shows

22 that the majority of our contract offer things that

1     have completed their terms have experienced savings  
2     is attached to 1.1. And, yes, that is accurate. I  
3     apologize. I missed that word. There is no  
4     inaccuracy there. I believe that is what it said at  
5     the time.

6     BY MS. SODERNA:

7             Q     And generally you take issue with the gas  
8     market monitor as unfairly comparing U.S. Energy's  
9     fixed-price product, with the regulated utilities'  
10    fluctuating rate because you believe it's comparing  
11    apples to oranges; right?

12            A     Generally that's correct, yes.

13            Q     Because one can't possibly compare a  
14    product like U.S. Energy's, which is a longer-term  
15    fixed price product before that term has completed.  
16    Is that your position?

17            A     No, the position is that there are  
18    different products in any competitive market. The  
19    whole or the underlying benefits to consumers is that  
20    you have a number of different offers from different  
21    competitors of different types of products that they  
22    can choose from. And they're not all the same.

1                   So, you know, in other markets you'll  
2   see where they have gas pricing-type things. They  
3   don't often try to compare the current variable rate  
4   against a fixed price. They put all the fixed-price  
5   offers together and they put all the variable rate  
6   offers together. And my -- the -- I guess the bottom  
7   line is that you're trying to compare our variable  
8   rate product, which is not the same value or the same  
9   as a fixed-price product. They're two different  
10  products. So, of course, they're never going to be  
11  the same.

12                  And I think what the CUB -- not to  
13  suggest what it does in your view. But in my view  
14  it's trying to put them both together to determine if  
15  there's a savings between them.

16           Q     Right.

17                  And that -- your perspective that you  
18  just shared really, sort of -- that perspective  
19  presumes that a customer has a fleet of different  
20  product offerings of which they must choose one  
21  because they, of course, need gas service. Does that  
22  fairly summarize what you just --

1           A     No, it's not that they have to choose  
2     because if they don't choose in this state, there is  
3     no requirement that they are forced to choose. They  
4     just go to the utility.

5           Q     Right.

6           A     What it suggests is that in any market  
7     there's a number of products, some are variable; some  
8     are blended; some are short term; some are long term.  
9     And normally what would be a normal comparison is you  
10    compare like products and the prices of those like  
11    products.

12                         So a product that provides stability  
13    versus a product that promises savings. Right. And  
14    we have a number of those different products in  
15    Illinois, but they're all provided together and it's  
16    all based on a determination of savings, not whether  
17    the like products are similar or what differences  
18    between like products. It compares strictly a  
19    savings against various different kinds of products.  
20    In my view, that's what I believe it does.

21           Q     But that -- I'm trying to get into the mind  
22    of the consumer here because that's what we do. And

1 I'm thinking from that perspective it sort of  
2 presumes that one is evaluating different groups of  
3 products.

4 A Right.

5 Q And choosing which suits their needs the  
6 best?

7 A That makes sense, yes.

8 Q That's how you believe that our consumers  
9 are evaluating your product when U.S. Energy sales  
10 agents come to the door?

11 A I believe that consumers who want to ride  
12 variable rates will stay on a utility or on a  
13 variable rate product. Those that would prefer to  
14 lock in a price similar as we -- you know, I do  
15 myself. And many consumers buy cell phone plans for  
16 three years with fixed pricing. They don't stay on a  
17 fluctuating month to month. They buy Internet  
18 service on two year plans that have a fixed monthly  
19 price regardless of what the market's doing. They  
20 buy burglar alarm systems on a fixed monthly  
21 three-year term, same as gas. You can either buy a  
22 variable rate and they're the same consumers probably

1     that fix their mortgage for long terms instead of  
2     riding the variable rate every month.

3                     It's a simple choice. And in our view  
4     we've tried to make it as simple as possible. If you  
5     like to ride the variability of the markets, you get  
6     a variable rate product, and there's many  
7     competitors, which I think are captured on your  
8     Website which offer a variable rate product.

9                     And there are some competitors such as  
10    ourselves that offer a fixed-rate product, some one  
11    year. Ourselves, I think in Illinois, we're the only  
12    one that offers a five-year. That's the choice a  
13    consumer has. And as the market matures, you'll see  
14    different kinds of offers coming out.

15                    You'll see recently that some of the  
16    competitors offered a -- you know, you get this much  
17    off until October, or you've got a seasonal price as  
18    opposed to just the fixed across the year or a  
19    different variable. And some are based off of NYMEX  
20    plus \$0.17 cents on your Website. Some are, you  
21    know, based off a NYMEX and they have \$3.99 service  
22    charge.



1           Q     I think I understand your point.

2           A     I'm sorry. I just -- I was trying to put  
3     it together.

4           Q     I think you've provided us enough examples  
5     to get your point.

6                     Can I ask you, are any of those  
7     products that you just described, other than utility  
8     products, regulated -- price regulated?

9           A     No, they're not.

10          Q     Is it your understanding that the utility's  
11     gas cost are price regulated?

12          A     Yes, they are.

13          Q     And I'm sorry, the utility's PGA, you would  
14     not call that the market rate of gas, would you?

15          A     No, it's the utility's price.

16          Q     And you testified at Page 22 of your  
17     rebuttal that you don't know if the gas market  
18     monitor accounts for all the charges, credits and  
19     taxes that should be included in such analysis;  
20     right?

21          A     That's correct.

22          Q     You testified that you believe the gas

1 market monitor fails to include certain  
2 transportation credits, fails to account for the  
3 lower delivery charge to choice customers and Peoples  
4 in -- Peoples Gas and North Shore Gas territory; is  
5 that right?

6 A I'm sorry. At what page? 22?

7 Q Yes.

8 A Lines?

9 What, I believe, I've identified here  
10 is I don't know if it does, is what my testimony  
11 states.

12 Q Did you review the methodology section of  
13 the gas market monitor in an effort to understand how  
14 it works?

15 A People that have worked for me has looked  
16 at it.

17 Q Did you review Mr. McDaniel's surrebuttal  
18 testimony regarding how the gas market monitor works?

19 A At some time ago, as I mentioned earlier.

20 Q And he testified, didn't he, that the  
21 transportation credits that you generally refer to  
22 are, in fact, included in CUB's analysis in the gas

1 market monitor?

2 A Subject to check, yes, I believe he did.

3 Q Did that clarify your understanding of the  
4 methodology of the gas market monitor?

5 A It gave me a general understanding. I  
6 identified I believe also that, you know, taxes are  
7 not included in your CUB monitor, I don't believe  
8 that was part of -- and, again, I apologize. I'm  
9 just trying to make time. I believe he went through  
10 a number of things. The transportation service  
11 credits are included, but taxes are -- the tax  
12 benefits are not.

13 Q And that's the only thing that you dispute  
14 on the gas market there that is not included in the  
15 rates that we present; right?

16 A I'd have to check; but, generally, two  
17 things, yes, to that question. And, secondly, I  
18 still have no understanding exactly or have I seen  
19 how they actually make their calculations in what  
20 manner to be able to determine how they calculate it  
21 against a fixed-price offering from a certain date.

22 Hopefully that answered the question.

1           Q     I'm curious, the gas market monitor  
2 methodology actually is not complicated. And let me  
3 know -- let me see if you -- if what I'm going to say  
4 is your understanding of what it does. It takes in,  
5 for example, someone in a Nicor Gas territory, it  
6 takes an average number of therms used from data  
7 drives and the Illinois Commerce Commission, and in  
8 the case of Nicor gas, it would be 1325 therms --

9           A     Right.

10          Q     -- and it calculates how much that person  
11 would pay under Nicor's regulated rate to how much  
12 that person would pay under, for example, U.S.  
13 Energy's fixed rate; right?

14          A     Correct.

15          Q     And with regard to the taxes, is it your  
16 understanding that only a small handful and, for  
17 example, eight municipalities do not tax competitive  
18 supply?

19          A     There are, in fact, far more than eight in  
20 the tariff pages that do not tax competitive supply,  
21 as I recall from the tariff sheets. I'm not sure  
22 between the two utilities. There are dozens of

1 municipalities that do not tax competitive supply.

2 Q Did you take that into account in your work  
3 papers that supported -- sorry -- strike that.

4 The benefit of a municipality not  
5 charging tax on the customer, you would accrue to  
6 U.S. Energy, that is, that tax benefit counts in your  
7 favor, in your view; right? Because that customer is  
8 actually saving more money because they're not taxed  
9 on their supply; right?

10 A That would be true.

11 Q And as far as you know, the gas market  
12 monitor doesn't purport to calculate actual savings  
13 or losses for specific customers; right? Just for an  
14 average customer; right?

15 A Well, it's, I think -- you know, that's  
16 interesting because we don't purport to offer savings  
17 either. But I think there's a --

18 Q No, I did say "offer." Calculate, the gas  
19 market monitor.

20 A Calculate, that's correct. That's what I  
21 believe.

22 Q And is it your understanding that CUB

1 receives the information about various alternative  
2 suppliers' offers directly from the suppliers?

3 A They do now, yes. They didn't at the time.

4 Q In fact, you personally communicate with  
5 CUB's director of communications, Jim Chilsen, on a  
6 weekly basis to inform CUB of the Company's current  
7 offers, don't you?

8 A Previously it was haphazard when they went  
9 onto your Website. And after this action was  
10 launched Jim and I began to speak weekly and he  
11 communicates with all of us now every week.

12 Q And you've actually -- you or someone under  
13 your direction consults the gas marketer frequently,  
14 wouldn't you say?

15 A I'm sorry. Sorry. Say it again.

16 Q Either you or someone under your direction  
17 reviews the gas market monitor on CUB's Website  
18 pretty frequently, wouldn't you say?

19 A No.

20 Q No.

21 How often would you say you or someone  
22 under your direction reviews the gas market monitor?

1           A     Other than in relation to this case, very  
2     seldom. Jim sends us a list of everybody's prices  
3     every Wednesday. We send them back. And really from  
4     a competitive prospective that's the -- the interest  
5     for us is how are the other competitors priced and  
6     how do we see ourselves with the products that are  
7     being offered so we know what's out there.

8                     And I know that wasn't part of your  
9     question, but that's the benefit for me is he  
10    provides me everybody's information so I don't have  
11    to try to get it myself.

12           Q     Right.

13                     And is it your understanding that were  
14    the Company to have any issue or discover any error  
15    in the gas market monitor that that would -- if it's  
16    brought to CUB's attention would be corrected? Is  
17    that your general understanding?

18           A     Sorry. Say that again one more time.

19           Q     If the Company determined in their review  
20    of the gas marketer, if and when they were to review  
21    it, that they determined any error or mistake, that  
22    if brought to CUB's attention that that would be

1 addressed?

2 A I think that's reasonable to assume now.

3 Q It's true, isn't it, that the Company  
4 marketed five year fixed price natural gas supply  
5 products to consumers in Illinois in 2004; right?

6 A That's correct.

7 Q And those customers that signed five-year  
8 contracts with U.S. Energy in 2004 and those who  
9 signed four-year contracts through September, say,  
10 2005, have all now completed their original  
11 contracts, right, those that remained with the  
12 Company? Right?

13 A That's right.

14 Q Prior to the preparation of your rebuttal  
15 testimony the Company was not able to identify any  
16 customers that had saved money on its product because  
17 the Company stated that it had not performed any  
18 analysis, study or examination of savings. Is that  
19 your recollection of the Company's response at that  
20 time?

21 A That's correct, yes.

22 Q And in your rebuttal testimony at Page 23,



1     Line 534, which was filed December 16th, 2008, you  
2     reveal what you term an analysis of the savings,  
3     losses of all U.S. Energy residential customers in  
4     Illinois that have completed the full term of their  
5     contract. Is that accurate?

6             A     That's correct.

7             Q     And when you say savings and losses, you  
8     compare what those customers paid to U.S. Energy with  
9     what they would have paid to their utility; right?

10            A     Similar to what the CUB does, yes.

11            Q     Did your analysis differ at all from the  
12    gas market monitor?

13            A     Yes, I believe it did.

14            Q     And how would that be?

15            A     Well, the results were in my rebuttal  
16    testimony with respect to what we found with our  
17    specific customers.

18            Q     Right. I wasn't talking about the results.  
19    I was talking about the analysis and how that  
20    differed from the gas market monitor.

21                   Can you identify any specific -- not  
22    dollars and cents, but how the methodology differed.

1           A     Well, the methodology differed in the fact  
2     that we did include all of the appropriate rates for  
3     every month, including taxes. And we also had each  
4     customer's consumption -- actual consumption and the  
5     exact date that they started, which was another  
6     issue, you know, earlier on before the -- the Jim  
7     process started which we were actually able to  
8     identify when they began and each price and take the  
9     actual detail. So there was no averaging or  
10    anything, it was actually data.

11           Q     Okay. I understand.

12           A     And I think that's the point that we're  
13    making. Although, we did it in response to try to --  
14    you know, a number of allegations made in this case,  
15    such as the concern about marketing or targeting low  
16    income. We did the other exercise because we wanted  
17    to look to make sure we had proof that it clearly was  
18    not happening, not just that we're saying it.

19                     Similar to savings and loss, it took a  
20    lot of resource time, but it continued to come up  
21    even though this -- the product does not provide  
22    savings, it continued to be brought up. So what I

1     did is I put resources aside and we looked at every  
2     single one of those customers one at time.

3                     It took a long time to do it. We  
4     pulled all the information out and gathered it. And  
5     then we found that, in fact, not only in Ontario,  
6     which was the other market which constantly got  
7     dismissed here, but, in fact, the customers that  
8     actually went through the first five years at the  
9     time or four years, actually -- you know, other than  
10    one of them they all saved money. And one saved over  
11    \$500.

12                    So there is, in fact, potential for  
13    savings in these products.

14            Q     And let's explore that a little bit because  
15    as I recall you said the total number of contracts  
16    entered into in 2004 was 38,811; right?

17            A     Subject to check, yes.

18                               (Whereupon, the following  
19                               proceedings were had of a  
20                               confidential nature and were  
21                               had in camera.)

22